REMARKS

In the Final Office Action[1], the Examiner rejected claims 1-4 under 35 U.S.C. §102(e) as being unpatentable over *Naik et al.*, U.S. Pub. No. 2006/0294238 ("*Naik*").

Claims 1-13 are pending in the application, of which claims 5-13 are withdrawn and 1-4 are currently under examination.

Applicants thank the Examiner for the courtesies extended to Applicants' representative during the telephonic interview held on October 2, 2008. During the interview, agreement was reached regarding claim 1. Specifically, it was agreed to that claim 1, as proposed to be amended, was not anticipated by *Naik*. In accordance with the amendments discussed for claim 1, Applicants have amended claims 1 and 3. Accordingly, the Applicants respectfully request that the Examiner withdraw the rejection of claims 1-4 under 35 U.S.C. §102(2) made in the Office Action of July 9, 2008, for at least the reasons discussed below.

I. Rejections of claims 1-4 under 35 U.S.C. §102(e)

Applicants respectfully traverse the rejection of claims 1-4 under 35 U.S.C. § 102(e) as anticipated by *Naik*. In order to properly establish that *Naik* anticipates Applicants' claimed invention under 35 U.S.C. § 102, each and every element of each of the claims in issue must be found, either expressly described or under principles of inherency, in that single reference. Furthermore, "[t]he identical

[1] The Final Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Final Office Action.

invention must be shown in as complete detail as is contained in the ... claim." *See* M.P.E.P. § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

Claim 1, as proposed to be amended, recites a method including, for example "**dynamically reconfiguring** resource **allocations** by **changing** the **hierarchical relations** between **grid managers** in the grid computing environment to **maintain** a predetermined resource **allocation level**," (emphasis added). *Naik* does not disclose at least this element.

In response to Applicants' remarks filed 11/30/2007, the Final Office Action alleges:

> The prior art of Naik discloses at least maintaining a quality of service (QoS) attribute of an associated service metric. In the event that the QoS metric cannot be provided based on client requests, additional service instances are deployed to handle the client requests which exceed the guaranteed level of service (e.g., see Para. 0105, 0112, 0114-0116, 0122). Accordingly, Applicant's argument is not found to be persuasive.

Final Office Action, pp. 2-3. The Final Office Action is correct in that *Naik* teaches maintaining Quality of Service (QoS) levels. However, *Naik* does not teach "dynamically allocating resources" in order to maintain a QoS level. In contrast to claim 1, *Naik* discloses:

> The services instantiated by tGRM in response to expected service requests from grid clients, as described above, are referred to as physical services. Because the resources on which they are deployed are not dedicated to run these services and may be withdrawn at a moment's notice, the **tGRM over-provisions resources** by deploying **more physical service instances than would be necessary in a**

> **dedicated and reliable environment**. The details of this are described subsequently.

Naik, [0069], emphasis added. Thus, *Naik* discloses forecasting future additional resource requirements or shortages, and compensating for these requirements by over-allocating resources in advance of the requirements. *Naik* discusses "additional service instances deployed" according to an increased demand. *Naik*, [0068]. However, these service instances represent resources allocated to a client prior to an increase in demand. As described in paragraph 69 above, *Naik* discloses maintaining QoS levels by allocating "backup" resources according to projected peak demand.

Even if *Naik* disclosed "dynamically allocating resources" to maintain a QoS level, which Applicants do not concede, *Naik* still fails to teach or suggest all of the elements of proposed amended claim 1. That is, *Naik* fails to teach or suggest "**dynamically reconfiguring** resource **allocations** by **changing** the **hierarchical relations** between **grid managers** in the grid computing environment to **maintain** a predetermined resource **allocation level**," as recited in proposed amended claim 1.

Naik discloses a hierarchical grid resource management system. *Naik,* [0032]. As discussed above, *Naik* discloses over-allocating resources to a client, then deploying a new service instance of that resource when necessitated by an increase in demand. *Naik,* [0032], However, *Naik* fails to disclose, or even suggest, "changing [ ] hierarchical relations" between the grid resource managers to maintain a QoS level. Therefore, *Naik* fails to disclose or suggest "**dynamically reconfiguring** resource **allocations** by **changing** the **hierarchical relations** between **grid managers** in the grid computing

environment to **maintain** a predetermined resource **allocation level**," as recited in proposed amended claim 1 (emphasis added).

Accordingly, for at least these reasons, *Naik* does not anticipate independent claim 1. Independent claim 3, while of different scope from claim 1, recites elements similar to those of claim 1 and is thus also allowable over *Naik* for reasons similar to those discussed above for claim 1. Dependent claims 2 and 4 are also allowable at least due to their dependence from claims 1 and 3, respectively.

CONCLUSION

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1-4 in condition for allowance. Applicants submit that the proposed amendments of claims 1 and 3 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relations claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Furthermore, Applicants respectfully point out that the final action by the Examiner presented some new arguments as to the application of the art against Applicants' invention. It is respectfully submitted that the entering of the Amendment would allow the Applicants to reply to the final rejections and place the application in condition for allowance.

Finally, Applicants submit that the entry of the Amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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